

1 Edward Bienz 153

2 A Yes.

3 MR. CLARKE: The chart is
4 inaccurate.

5 You would agree,
6 Mr. Grandinette?

7 MR. GRANDINETTE: No, I
8 wouldn't.

9 You'll have a chance to question
10 your witness.

11 This is my deposition.

12 Q Now, sir, moving forward, I'd
13 ask you to start reading from the pink
14 highlighted section, okay?

15 A "[REDACTED]
16 [REDACTED]."

17 Q That refers to leaving the Blue
18 Honu, right?

19 A Yes.

20 Q So whatever time you got there,
21 you left approximately a half hour later?

22 A Yes.

23 Q Please continue.

24 A "[REDACTED]
25 [REDACTED]."

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Edward Bienz

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Q Now The Tavern was the bar that
you said you'd been to on prior occasions,
some of the 25 prior occasions that you went
to Huntington Village, right?

A I had been there previously.

Q You had two beers.
Were they bottled beers or tap
beers?

A Bottled.

Q Do you know what kind of beer it
was?

A No.

Q Bud, Heineken?

A No.

Q 12-ounce beers?

A Yes.

Q Same thing at the Blue Honu,
bottled beer?

A I don't recall.

Q Continue. Next?

A "██████████ ██████████ ██████████ ██████████ ██████████
██████████, ██████████ ██████████ ██████████ ██████████ ██████████ ██████████."

Q So would it be fair to say that
you had a very specific recollection, on

1 Edward Bienz 155

2 March 13, 2012, what each -- what and how
3 much each person in your party had to drink
4 at The Tavern in Huntington Village?

5 A Yes.

6 Q And given your specific
7 recollection of what and how much each party
8 had to drink one year after the event at The
9 Tavern, you certainly were aware of those
10 facts on February 27th, 2011, at Huntington
11 Hospital?

12 A Yes.

13 Q You certainly were aware of
14 those same facts on February 27th, 2011, at
15 the Second Precinct, correct?

16 A Yes.

17 Q As well as on April 29, 2011,
18 when you were interviewed by Anthony Palumbo
19 at the Suffolk County DA's office, correct?

20 A Yes.

21 Q So let's go back to Plaintiff's
22 58. Look at your chart for a minute,
23 starting with Anthony DiLeonardo.

24 You said that he had two vodka
25 drinks. Time is between 11:00 and 12:00,

1 Edward Bienz 156

2 and location is The Tavern in Huntington,
3 right?

4 A Location is right.

5 I don't know about the times.

6 Q The time could have been off,
7 either way?

8 A Yes.

9 Q But the number of drinks is
10 accurate, right?

11 A Yes.

12 Q Going to yourself, you had two
13 bottled beers at The Tavern.

14 That's accurate, right?

15 A Yes.

16 Q Says the same time frame. That
17 may be off either way a little bit.

18 But otherwise, it's accurate?

19 A Yes.

20 Q Your wife, Jillian, one drink at
21 The Tavern, accurate, correct?

22 A Yes.

23 Q Do you know whether or not your
24 wife drank an alcohol-based drink at The
25 Tavern?

1 Edward Bienz 157

2 A No.

3 Q You don't know?

4 A No.

5 Q In the 20 times you spoke to her
6 about the case between February 27th and
7 today, she didn't mention whether or not she
8 drank alcohol?

9 MR. CLARKE: Objection,
10 privileged discussions.

11 Direct him not to answer that
12 question.

13 MR. GRANDINETTE: I'll withdraw
14 the question, because you're right.

15 Make sure that is not on the
16 record.

17 Q Looking at Sophie Cornea's
18 consumption chart, one drink, between 11:00
19 and 12:00, at The Tavern?

20 A Yes.

21 Q Do you know whether or not
22 Ms. Cornea's drink was alcohol-based?

23 A No.

24 Q Now, moving on to the next
25 sentence, highlighted in next series of

Edward Bienz

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sentences, highlighted in yellow, could you please read that into the record.

A

"[REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]

[REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]

[REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]

[REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]

[REDACTED] [REDACTED] [REDACTED] [REDACTED]

[REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]

[REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]

[REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]."

Q

Now, going back to Plaintiff's 58, Anthony DiLeonardo, you indicated that he had two vodka drinks The Artful Dodger.

Is that accurately reflected in the chart?

A

Yes.

Q

And the total of seven drinks, does that accurately reflect your recollection of the total number of drinks Anthony had that night?

A

Yes.

Q

Now, Ed, your chart, it indicates that you told IAU you had two beers; and on the chart, it says two beers

1 Edward Bienz 159

2 at The Artful Dodger between 12:00 and 1:00.

3 Is that accurate?

4 A Yes.

5 Q Were those bottled beers as
6 well?

7 A Yes.

8 Q Do you recall what type of beers
9 those were?

10 A No.

11 Q Your wife's chart.

12 The size of your beers, 12-ounce
13 beers?

14 A Yes.

15 Q Jillian, she had one drink at
16 The Artful Dodger?

17 A I don't remember what it was.

18 Q You're maintaining that you
19 don't recall whether or not your wife had an
20 alcohol-based drink --

21 MR. SCHROEDER: Objection to
22 form.

23 Q -- The Artful Dodger?

24 A Yes.

25 Q So the best that you can recall,

1 Edward Bienz 160

2 as you sit here today, is that your wife had
3 one alcohol-based drink. Otherwise, you're
4 not sure?

5 A Yes.

6 Q That would be one martini at the
7 Black Forest Brew Haus?

8 A Yes.

9 Q If that was true, by the way,
10 your wife could have driven home -- driven
11 the car, right?

12 A Yes.

13 Q There would have been no issue
14 with respect to your wife's operating the
15 car, that she would have been clearly sober,
16 right?

17 A Yes.

18 Q When you have went out that
19 night, you didn't designate anybody as the
20 designated driver, in your party, right?

21 A No.

22 Q Now, looking at the chart for
23 Sophie Cornea, according to you, she had one
24 drink between 12:00 and 1:00 a.m. The Artful
25 Dodger, right?

1 Edward Bienz 161

2 A Yes.

3 MR. SCHROEDER: Objection to
4 form.

5 Q Is it your position, you don't
6 know whether or not that was an
7 alcohol-based drink?

8 A I don't know what it was.

9 Q So the only thing you can attest
10 to with respect to Sophie, she had at least
11 one alcohol-based drink at the Black Forest
12 Brew Haus?

13 A Yes.

14 Q Now, would it be fair to say
15 that you had a very specific recollection of
16 what each person in your party had to drink,
17 one year after the events, while you were
18 The Artful Dodger in Huntington Village?

19 A Yes.

20 Q Given your specific recollection
21 of what and how much each party had to
22 drink, one year after the event, at The
23 Artful Dodger, you certainly were aware of
24 those facts on February 27, 2011, while at
25 Huntington Hospital?

1 Edward Bienz 162

2 A Yes.

3 Q You certainly were aware of that
4 fact, or those facts, on February 27th,
5 2011, at the Second Precinct?

6 A Yes.

7 MR. MITCHELL: I'm leaving, but
8 I will be back.

9 Q You were aware of those facts on
10 April 29, 2011, at Willard Miller's office
11 when being interviewed by the Suffolk County
12 DA's, correct?

13 A Yes.

14 Q Now, on February 27, 2011, while
15 at the Huntington Hospital, did you ever
16 tell any member of the Nassau County Police
17 Department or Suffolk County Police
18 Department that you had three beers at the
19 Black Forest Brew Haus?

20 MR. SCHROEDER: Objection.

21 A I don't know.

22 Q On February 27, 2011, while at
23 Huntington Hospital, did you ever tell any
24 member of the Nassau County or Suffolk
25 County Police Department that Anthony

1 Edward Bienz 163

2 DiLeonardo had at least two vodka drinks at
3 the Black Forest Brew Haus?

4 MR. SCHROEDER: Objection.

5 A I don't know.

6 Q On February 27th, 2011, while at
7 the Huntington Hospital, did you ever tell
8 any member of the Nassau County or Suffolk
9 County Police Department that your wife had
10 a martini and Sophie Cornea had a vodka
11 drink at the Black Forest Brew Haus in
12 Farmingdale?

13 MR. SCHROEDER: Objection.

14 A I don't know.

15 Q Did you ever, sir, intentionally
16 omit those facts --

17 A No.

18 Q Let me please finish the
19 sentence.

20 -- meaning, the amount and what
21 each person in your party consumed at the
22 Black Forest Brew Haus, from your account
23 too the Nassau County or Suffolk County
24 police investigators?

25 MR. SCHROEDER: Objection.

Edward Bienz

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MR. CLARKE: Objection.

You can answer.

A No.

Q On February 27, 2011, while at the Huntington Hospital, did you ever tell any member of the Nassau County or Suffolk County Police Department that you had one beer while at the Blue Honu in Huntington?

A I don't know.

Q On February 27, 2011, while at Huntington Hospital, did you ever tell any member of the Police Department of -- Nassau County Police Department or Suffolk County Police Department, that Anthony DiLeonardo had one vodka drink?

A I don't know.

Q On February 27, 2011, while at Huntington Hospital, did you ever tell any member of the Nassau County or Suffolk County Police Department that Jillian Bienz or Sophie Cornea had at least one drink?

A I don't know.

Q Sir, did you ever intentionally omit how much you or any member in your

1 Edward Bienz 165

2 party had to drink while at the Blue Honu in
3 Huntington Village to police investigators?

4 A No.

5 Q On February 27th, 2011, while at
6 Huntington Hospital, did you ever tell any
7 member of the Nassau County or Suffolk
8 County Police Department that you had two
9 beers while at The Tavern?

10 A I don't know.

11 Q On February 27, 2011, while at
12 Huntington Hospital, did you ever tell any
13 member of the Nassau County or Suffolk
14 County Police Department that Anthony
15 DiLeonardo had two vodkas at The Tavern?

16 A I don't know.

17 Q On February 27th, 2011, while at
18 Huntington Hospital, did you ever tell any
19 member of the Nassau County or Suffolk
20 County Police Department that Jillian Bienz
21 and Sophie Cornea had one drink each, while
22 at The Tavern?

23 A I don't know.

24 Q Sir, did you ever intentionally
25 omit the amount and type of alcohol you or

1 Edward Bienz 166

2 any member of your party consumed, from
3 police investigators --

4 A No.

5 Q -- while at the Tavern?

6 A No.

7 MR. SCHROEDER: Objection to
8 form.

9 Q On February 27th, 2011, while at
10 Huntington Hospital, did you ever tell any
11 member of the Nassau County or Suffolk
12 County Police Department that you had two
13 beers The Artful Dodger?

14 A I don't know.

15 Q On February 27th, 2011, while at
16 Huntington Hospital, did you ever tell any
17 member of the Nassau County or Suffolk
18 County Police Department that you had two
19 vodka drinks at The Artful Dodger?

20 A I don't know.

21 Q On February 27, 2011, while at
22 Huntington Hospital, did you ever tell any
23 member of the Nassau County or Suffolk
24 County Police Department that your wife and
25 Sophie Cornea had one drink each, while The

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Edward Bienz

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Artful Dodger?

MR. SCHROEDER: Objection.

A I don't know.

Q Did you tell any member of the Nassau County or Suffolk County Police Department, while at the Huntington Hospital, that you drank alcohol?

MR. SCHROEDER: Objection.

MR. CLARKE: Objection.

A I don't know.

Q Did you tell any member of the Nassau or Suffolk County Police Department, while at Huntington Hospital, that Anthony DiLeonardo had drunk alcohol?

MR. SCHROEDER: Objection.

MR. CLARKE: Objection.

A I don't know.

Q While at Huntington Hospital, did you ever tell any member of the Nassau County or Suffolk County Police Department that your wife had drunk alcohol?

MR. SCHROEDER: Objection.

MR. CLARKE: Objection,
relevance.

1 Edward Bienz 168

2 A I don't know.

3 Q Did you tell any member of the
4 Nassau County or Suffolk County Police
5 Department that Sophie Cornea drank alcohol?

6 A I don't know.

7 MR. SCHROEDER: Objection.

8 Q Now I'm going to ask you the
9 same series of questions with respect to the
10 Second Precinct.

11 A Okay.

12 Q On February 27th, from the time
13 that you left the hospital to the time that
14 you left the Second Precinct, did you ever
15 tell any member of the Nassau County or
16 Suffolk County Police Department that you
17 had the three beers at the Brew Haus prior
18 to the shooting?

19 A I don't know.

20 Q Did you ever tell any member of
21 the Suffolk County -- same time frame --
22 Suffolk County Police Department or the
23 Nassau County Police Department that Anthony
24 DiLeonardo had at least two vodka drinks at
25 the Blue Honu prior to the shooting --

1 Edward Bienz 169

2 A No.

3 Q Withdrawn.

4 -- on February 27th?

5 MR. CLARKE: You made a gesture.

6 You want to talk to me?

7 THE WITNESS: Yes.

8 MR. CLARKE: I want to speak to
9 my client for one second.

10 Q Mr. Bienz, let's look at
11 Plaintiff's 58.

12 Between your transport from the
13 hospital until the time you left the Second
14 Precinct, did you ever tell any member of
15 the Nassau County or Suffolk County Police
16 Department the amount and the type of
17 alcohol that you drank at the Blue Honu,
18 Black Forest Brew Haus, The Tavern and The
19 Artful Dodger?

20 MR. SCHROEDER: Objection.

21 MR. CLARKE: Objection.

22 A I don't know.

23 Q When you were interviewed by
24 Tavares and Lesser, at the Second Precinct,
25 did you ever tell Tavares or Lesser that you

1 Edward Bienz 170

2 had two vodka drinks -- I'm sorry, three
3 beers -- while at the Black Forest Brew Haus
4 in Farmingdale?

5 MR. SCHROEDER: Objection.

6 A I don't know.

7 Q When you were interviewed by
8 Tavares and Lesser at the Second Precinct,
9 did you ever tell them that you had one beer
10 while at the Blue Honu in Huntington?

11 A No.

12 Q While being interviewed by
13 Tavares and Lesser, did you ever tell them
14 that you had two beers in Huntington prior
15 to the shooting?

16 A I don't know.

17 Q When interviewed by Tavares and
18 Lesser, did you ever tell either one of them
19 that you had two beers at the Artful Dodger
20 in Huntington prior to the shooting?

21 A I don't know.

22 Q So would it be fair to say that
23 you don't know whether or not you told
24 Detectives Tavares and Lesser that you
25 consumed eight beers between roughly 8:00

1 Edward Bienz 171

2 and 1:00 a.m., immediately prior to the
3 shooting?

4 A I don't know.

5 Q With respect to Anthony
6 DiLeonardo, when you were being interviewed
7 by Tavares and Lesser at the Second
8 Precinct, did you ever tell them that
9 Anthony DiLeonardo had two vodkas while at
10 the Black Forest Brew Haus?

11 A I don't know.

12 Q Did you ever tell them that he
13 had one vodka while at the Blue Honu?

14 A I don't know.

15 Q Did you ever tell them that he had
16 two vodkas at The Tavern?

17 A I don't know.

18 Q Did you ever tell them that he
19 had two vodkas while The Artful Dodger?

20 A I don't know.

21 Q Did you ever tell either one of
22 them that you saw Anthony DiLeonardo consume
23 seven vodka-based drinks between 8:00 and
24 1:00 a.m., prior to the shooting?

25 A I don't know.

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Edward Bienz

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Q So as you sit here today, you don't know if you ever communicated those facts to the men that you perceived to be the lead investigators in the case?

MR. SCHROEDER: Objection.

MR. CLARKE: Misleading question.

A Repeat the question.

Q Did you have an understanding that Tavares and Lesser were the lead investigators in the case?

A No.

Q Did you know Tavares and Lesser were homicide detectives?

A No.

Q Did you know that they were detectives investigating the incident on Oakwood Road that you were involved with?

A Yes.

Q So you knew that they were investigators?

A (No response.)

Q They were questioning you and questioning Anthony about what happened,

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Edward Bienz

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right?

A Yes.

Q Earlier we talked about you having a working knowledge of what investigators -- what facts may be relevant to investigators when they're assessing a case, right?

A Yes.

Q As you sit here today, you don't know whether you imparted the fact to Lesser or Tavares that prior to the shooting, between 8:00 and 1:00, you had eight beers and DiLeonardo had seven vodkas?

MR. CLARKE: Objection to the form of the question.

You haven't established that they asked him.

MR. GRANDINETTE: It doesn't matter, if they didn't ask him or if they asked him.

MR. CLARKE: I know that. That's the problem.

Q Fair to say, based upon your testimony that you don't have a recollection

1 Edward Bienz 174

2 of whether or not you imparted the fact that
3 you had eight beers between 8:00 and 1:00 to
4 Lesser or to Tavares, correct?

5 A I don't recall.

6 Q You don't recall whether or not
7 you imparted the fact that Anthony
8 DiLeonardo had at least seven vodkas between
9 8:00 and 1:00 to Lesser and Tavares, right?

10 A I don't recall.

11 Q Did you, during that same
12 interview, ever hear Anthony DiLeonardo
13 impart the fact that you had eight beers
14 prior to the shooting?

15 A I was interviewed separately.

16 Q So, then, in other words, if you
17 were interviewed separately, where was
18 Anthony when he was interviewed?

19 A Conference room.

20 Q You weren't there when he was
21 interviewed?

22 A No.

23 Q How long was he interviewed?

24 A I don't know.

25 Q You never talked to him about

1 Edward Bienz 175

2 his interview?

3 A No.

4 Q So then you would have no idea
5 what he imparted during the interview?

6 A No.

7 Q Did he ever tell you later?

8 A No.

9 Q Now, so you never heard Anthony
10 DiLeonardo asked one question by any
11 investigator?

12 A No.

13 Q When you say no, that means you
14 didn't hear any Suffolk County investigator
15 ask Anthony any questions about the event?

16 A Not specifically, no.

17 Q You know he was questioned about
18 the underlying events, but you weren't
19 there?

20 A Yes.

21 Q Is that true with respect to how
22 your interview happened?

23 A Yes.

24 Q So you were interviewed about
25 the events by Tavares and Lesser, but

1 Edward Bienz 176

2 Mr. DiLeonardo wasn't present?

3 A I don't know if it was both of
4 them.

5 Q Okay. When you were interviewed
6 about the underlying events, it was either
7 by Tavares or Lesser?

8 A I don't know.

9 Q At any rate, were you
10 interviewed by a member of the Suffolk
11 County Police Department?

12 A Yes.

13 Q When they interviewed you -- I'm
14 talking about an interview pertaining to the
15 substantive facts that transpired on Oakwood
16 Road; so we're on the same page?

17 A Yes.

18 Q When that interview took place,
19 where was it?

20 A In an office.

21 Q At the Second Precinct?

22 A Yes.

23 Q How long was it?

24 A I don't remember.

25 Q About a half hour?

1 Edward Bienz 177

2 A I'd have to guess.

3 I don't know.

4 Q I don't want you to guess, but
5 you can't give me any estimate?

6 A Less than an hour.

7 Q So during that less than an
8 hour, Anthony DiLeonardo wasn't present;
9 that's what you're telling me?

10 A Yes.

11 Q So, you could have
12 communicated -- you don't recall
13 communicating to whoever it was that
14 interviewed you, the amount that you had to
15 drink?

16 A No.

17 Q Or the amount that Anthony had
18 to drink?

19 A No.

20 Q Now was that intentional, by
21 design, that you didn't communicate those --

22 MR. CLARKE: Objection to the
23 form of the question.

24 He said he doesn't remember.

25 The question is highly improper.

1 Edward Bienz 178

2 Please rephrase it.

3 He is not answering that
4 question.

5 Q Prior to going into the
6 interview, did you by design with Anthony
7 DiLeonardo ever agree not to tell the
8 investigators where you were or how much you
9 had to drink?

10 MR. CLARKE: Over objection, you
11 can answer.

12 A No.

13 Q So then there was no
14 understanding, according to you, between
15 yourself and Mr. DiLeonardo to conceal the
16 facts from the investigators about where you
17 had been and what you had drunk, prior to
18 the event?

19 A No.

20 Q As you sit here today, do you
21 know what Anthony DiLeonardo told the
22 investigators during his interview?

23 A No.

24 Q So it's possible then that both
25 you and Anthony were interviewed, and that

1 Edward Bienz 179

2 both of you did not tell the Suffolk
3 investigators what and the amount that you
4 drank prior to the shooting?

5 MR. CLARKE: Objection.

6 MR. SCHROEDER: Objection.

7 MR. CLARKE: Direct him not to
8 answer that question. It's entirely
9 inappropriate and improper.

10 Q Based upon what you're telling
11 me so far, you don't know what Anthony said?

12 A I do not know what he said.

13 Q So if you don't know what
14 Anthony said, it's possible that he never
15 told the Suffolk County investigators what
16 and how much he had to drink, or what and
17 how much you had to drink, prior to the
18 shooting, correct?

19 MR. CLARKE: Not Cervantes.
20 Anything is possible. He wasn't
21 present.

22 MR. GRANDINETTE: I understand.

23 MR. CLARKE: Silly question,
24 Mr. Grandinette.

25 MR. GRANDINETTE: Fine.

1 Edward Bienz 180

2 Q Silly as it is, can you answer
3 it?

4 A I don't know what he said.

5 Q It's possible that he didn't
6 tell the investigators what and how much he
7 drank, right?

8 MR. SCHROEDER: Objection.

9 MR. CLARKE: Over objection, you
10 can answer.

11 A It's possible.

12 Q So it's also possible that he
13 didn't tell investigate what and how much
14 you had --

15 A It's possible.

16 Q -- to drink?

17 Because you don't recall whether
18 he told investigators what and how much you
19 had to drink, it's possible that they didn't
20 know, on February 27, 2011, after your
21 interview, that you consumed eight beers
22 prior to the shooting, correct?

23 MR. CLARKE: Objection.

24 You can answer.

25 A Possible.

1 Edward Bienz 181

2 Q It's also possible, based upon
3 the fact that you don't recall whether you
4 told them Anthony DiLeonardo consumed seven
5 vodkas prior to the shooting, that he did,
6 right?

7 MR. SCHROEDER: Objection.

8 MR. CLARKE: Objection to the
9 form of the question.

10 Please read it back.

11 MR. GRANDINETTE: I'll rephrase
12 it.

13 Q It's also possible, based upon
14 the fact that you don't remember telling
15 investigators that Anthony DiLeonardo
16 consumed seven vodkas, that Suffolk
17 investigators were never aware that he
18 drank, prior to the shooting?

19 MR. CLARKE: Objection to the
20 form of the question. It's entirely
21 improper.

22 Please ask another question.

23 Q Correct?

24 A Restate again. I'm sorry.

25 Q If you don't recall telling

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Edward Bienz

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investigators that Anthony DiLeonardo had the seven vodkas prior to shooting Thomas Moroughan, it's possible they didn't know that fact, right?

A It's possible.

MR. CLARKE: Objection.

You can answer.

A It's possible.

Q Now you, as a police officer with experience investigating crimes, is it a relevant fact to know whether or not somebody who discharges a firearm had been drinking prior to discharging that firearm?

MR. CLARKE: Objection to the form of the question. He's not here as an expert in investigating crimes. He is not going to answer this question.

MR. GRANDINETTE: I'll ask the question again. You can you have your objection.

But based upon his experience, I'm not asking him as an expert.

Q I'm asking you, based upon your

1 Edward Bienz 183

2 experience as an investigator and a police
3 officer, is it relevant to know whether or
4 not somebody had been drinking prior to
5 discharging a firearm?

6 MR. CLARKE: Over objection, you
7 can answer.

8 A During certain circumstances,
9 yes.

10 Q Would this factual scenario be
11 one of those circumstances?

12 MR. CLARKE: Over objection, you
13 can answer.

14 A Yes.

15 Q This case involves, right -- you
16 testified earlier you're not allowed to
17 shoot a gun into a moving motor vehicle
18 pursuant to the rules and regulations,
19 absent certain exceptions, right?

20 A Yes.

21 Q One of the exceptions requires
22 an analysis of the shooter's state of mind,
23 right, whether they were justified in
24 shooting in defense of either themselves or
25 is a third person, right?

1 Edward Bienz 184

2 A Yes.

3 Q You know, as a police officer
4 that, you know, prior to shooting that
5 weapon, if there's an alternative escape,
6 like if you can step to the side and get out
7 of the way of an oncoming motorist, you have
8 to do that, prior to pulling the trigger?

9 MR. CLARKE: Objection. He's
10 not an expert on this.

11 You're asking him an expert
12 question.

13 MR. GRANDINETTE: I'm not asking
14 him an expert question.

15 And he is a cop. He enforces
16 the law.

17 MR. CLARKE: He didn't shoot
18 anybody.

19 MR. GRANDINETTE: It doesn't
20 matter. I'm not saying he did.

21 Q Sir, wouldn't it be true that in
22 this set of circumstances, the discharge of
23 a firearm into it a moving car, requires an
24 analysis, from a law enforcement
25 perspective, of the justification defense,

1 Edward Bienz 185

2 right.

3 MR. CLARKE: Over objection, you
4 can answer.

5 A Can you rephrase.

6 Q Yeah. Part of the analysis,
7 from a law enforcement perspective, is the
8 circumstances under which the shooter pulled
9 the trigger, right?

10 MR. CLARKE: Objection.
11 For who? Whose analysis?

12 MR. GRANDINETTE: Law
13 enforcement analysis. The people
14 analyzing this fact pattern.

15 MR. CLARKE: Mr. Grandinette, he
16 wasn't one of those people.

17 MR. GRANDINETTE: I don't care,
18 Chris.

19 MR. CLARKE: I do.
20 It's an entirely improper
21 question.

22 MR. GRANDINETTE: You think it
23 is, I don't.

24 So state your objection, and
25 please let me get through it.

1 Edward Bienz 186

2 MR. CLARKE: I've stated my
3 objection.

4 MR. GRANDINETTE: Okay. So I'm
5 going to start again.

6 Q Okay. We talked about you
7 thought that alcohol and whether or not
8 somebody was drinking alcohol, was a
9 relevant factual issue to the facts in this
10 case, right?

11 A Yes.

12 MR. CLARKE: Asked and answered.

13 Q One of the reasons for that is
14 because from a law enforcement perspective,
15 you have to analyze the state of mind of the
16 shooter at the time he pulled the trigger?

17 MR. CLARKE: Who has to analyze
18 it?

19 MR. GRANDINETTE: Is that an
20 objection?

21 MR. CLARKE: Yes.

22 MR. GRANDINETTE: Chris, I've
23 been over this.

24 MR. CLARKE: It's an improper
25 question.

1 Edward Bienz 187

2 MR. GRANDINETTE: Then make your
3 objection.

4 MR. CLARKE: I am.

5 MR. GRANDINETTE: So make your
6 objection.

7 MR. CLARKE: Whose analysis?

8 MR. GRANDINETTE: He'll tell me
9 if he needs clarification, okay?

10 Q Sir, getting black to my
11 question, knowing that alcohol or the
12 consumption of alcohol would play a role in
13 the analysis of the facts in this case, one
14 of the reasons for that is that the police
15 investigators have to make a determination
16 of the state of the mind of the shooter at
17 the time he pulls a trigger, right?

18 MR. CLARKE: Over objection, you
19 can answer.

20 A Yes.

21 Q Whether or not his belief that
22 he is in eminent fear of serious physical
23 injury or death is justified and reasonable,
24 right?

25 MR. CLARKE: Objection to the

1 Edward Bienz 188

2 form of the question.

3 You can answer.

4 A Yes.

5 Q That certainly could be
6 impacting significantly, based upon the
7 shooter's can consumption of alcohol, right?

8 MR. CLARKE: Objection,
9 speculation. Relevance.

10 You can answer, over objection.

11 A Could be.

12 Q Didn't you train, and haven't
13 you made personal observations over the
14 course of your career, of how alcohol
15 ingestion affects once's cognitive ability?

16 MR. CLARKE: Objection, asked
17 and answered.

18 A Yes.

19 Q The perception, correct?

20 A Yes.

21 Q Their ability to make judgments,
22 correct?

23 A Yes.

24 Q Their physical coordination,
25 correct?

1 Edward Bienz 189

2 A Yes.

3 Q Rational thought process,
4 correct?

5 A Yes.

6 Q Would you agree with me that
7 somebody who didn't have any drinks, as
8 opposed to seven vodkas, would be in a
9 better position mentally to make important
10 decisions?

11 MR. CLARKE: Objection to the
12 form of the question.

13 It's an improper question.

14 It's an improper hypothetical.

15 Q Let me ask you this. Would you
16 concede that Anthony DiLeonardo would have
17 been in a far better position to make a
18 decision had he not have had the seven
19 vodkas --

20 MR. CLARKE: Objection to the
21 formed of the question.

22 Q -- than if he had the seven
23 vodkas, on February 27th, before pulling
24 that trigger?

25 MR. SCHROEDER: Objection.

1 Edward Bienz 190

2 You can answer.

3 MR. CLARKE: Actually, I'm going
4 to direct him not to answer that
5 question.

6 You haven't established that he
7 saw him do it.

8 MR. GRANDINETTE: It doesn't
9 matter.

10 Q As you sit here today, you know
11 Anthony DiLeonardo shot five rounds at the
12 vehicle?

13 MR. SCHROEDER: Objection.

14 A As of now?

15 Q Yes.

16 A Yes.

17 Q It's in your statement. You've
18 told a lot of people.

19 MR. CLARKE: Not five rounds.

20 Ed, if you're beginning to jump
21 around and be vague --

22 MR. GRANDINETTE: I got to hold
23 you to the facts, to the statement.

24 MR. CLARKE: He never said five
25 rounds.

1 Edward Bienz 191

2 MR. GRANDINETTE: You're an
3 experienced trial lawyer.

4 MR. CLARKE: As are you.

5 MR. GRANDINETTE: Just make your
6 objection. Let me move on.

7 You can't have speaking
8 objections.

9 MR. CLARKE: You have such a
10 willful intent to mislead and confuse
11 the question.

12 MR. GRANDINETTE: Please make
13 your objection and let me move on.

14 MR. CLARKE: You pick facts and
15 drop them into assumptions, you take a
16 guess and make it real.

17 It's magical, But it's improper.

18 MR. GRANDINETTE: Just state
19 your objection.

20 MR. CLARKE: Rephrase the
21 question.

22 As currently phrased, he is not
23 going to answer it.

24 Q Sir, as you sit here today,
25 you're aware that Anthony DiLeonardo shot

1 Edward Bienz 192

2 his 38 into the front windshield of the cab
3 on February 27th, right?

4 MR. SCHROEDER: Objection.

5 MR. CLARKE: Over objection, you
6 can answer.

7 A Yes.

8 Q He struck Thomas Moroughan,
9 right?

10 A Yes.

11 Q My point to you is, would you
12 agree with me that he would have been in a
13 far better position to make a judgment on
14 February 27th, 2011, when he pulled the
15 trigger, had he not had those seven drinks
16 prior to shooting?

17 MR. CLARKE: You can answer,
18 over objection.

19 MR. SCHROEDER: Objection.

20 A Yes.

21 MR. CLARKE: It's 1:45.
22 Take a lunch break?

23 MR. GRANDINETTE: Sure.

24 MR. CLARKE: I got 2:53,
25 accumulated time.

1 Edward Bienz 193

2 (Lunch recess)

3 Q Mr. Bienz, I'm going to direct
4 your attention, please, back to February 26,
5 2011; and I'd ask to have Plaintiff's 58 in
6 front of you when we go through some of my
7 questioning.

8 MR. SCHROEDER: What's 58.

9 MR. GRANDINETTE: 58 is the
10 alcohol chart.

11 MR. CLARKE: That
12 Mr. Grandinette's office prepared.

13 MR. GRANDINETTE: Okay.

14 Q Now, can you tell me when you
15 made plans to go out on the 26th, what the
16 background was with that?

17 A We made the plans a few days
18 previous.

19 I had been working during the
20 course of the evening. And my cousin
21 Christopher, who's also one of my close
22 friends, called me and asked me if I wanted
23 to go out to dinner, to the Black Forest
24 Brew Haus, with him and his girlfriend.

25 So I was off that night, so I

1 Edward Bienz 194
2 said, yeah, I'll go.

3 When I got off the phone, he
4 happened to be doubled up at that time with
5 Anthony DiLeonardo and with the RMP car. He
6 said, how come we don't hang out? I said,
7 you want to come along? And he is like,
8 yeah, sure. I'll come along with you.

9 So we had planned to go, on that
10 evening, to dinner with my cousin and his
11 girlfriend, and with possibly another
12 couple. It was friends of my cousin's
13 girlfriend, Anthony, my wife, and his
14 girlfriend, about the day before.

15 Sometime in that window, my
16 cousin called me and canceled due to
17 illness. And obviously the other people who
18 were possibly going with them, weren't going
19 to come, because they didn't know us.

20 So me and my wife decided to
21 keep the plans and go to dinner with
22 Anthony.

23 Q What time did you plan to meet
24 Anthony?

25 A 8 o'clock.

1 Edward Bienz 195

2 Q You said you were off that day.

3 Do you recall which day?

4 A No.

5 Q Did you have anything to drink

6 of an alcoholic nature prior to driving to

7 the Brew Haus?

8 A No.

9 Q How about your wife?

10 A No.

11 Q So did you make it on time?

12 A Yes.

13 Q Were you there at 8:00, a little

14 after 8:00, do you recall?

15 A No. It was 8 o'clock.

16 Q 8 o'clock on the dot?

17 A Yes.

18 Q Did you GPS it? How did you get

19 there?

20 A I knew where it was.

21 I went to school in the area.

22 Q So it's near SUNY Farmingdale?

23 A Yes.

24 Q Tell what you did when you got

25 there, briefly.

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A Parked my car.

And we got out and went inside.

Q Was Anthony on time.

A Yes.

Q Was he there before you?

A I don't know.

Q Did you meet simultaneously?

A We were both there around the
same time, whether we waited in the car for
a few minutes, or vice versa. We were both
there right around 8 o'clock.

Q Take any time to get seated?

A Not that I recall.

Q I'm sure you enjoyed your
dinner. You said in your statement, you had
dinner and appetizers?

A Yes.

Q Looking at Plaintiff's 58, and
looking at your statement, you said you left
about 9:30 or 10:00.

A Yes.

Q All right.

Do you know how long it took you
to get from the Black Forest Brew Haus in

1 Edward Bienz 197

2 Farmingdale to the Blue Honu?

3 A Approximately 15-20 minutes.

4 Q Do you know what the distance is
5 between those two places?

6 A No.

7 Q At any rate, any idea what time
8 you arrived at the Blue Honu?

9 A No.

10 Q According to your statement, you
11 remained -- before you drove to the Blue
12 Honu, did you make plans, prior to meeting
13 at the Black Forest Brew Haus, that you were
14 going to go from dinner into the Village, or
15 was this something spontaneous that came up
16 at dinner?

17 A It came up from dinner.

18 Q And whose idea was that, if you
19 remember?

20 A I don't.

21 Q So you don't know who decided to
22 go into Huntington Village?

23 A We had -- you know, we talked
24 about doing something thereafter. We
25 discussed a few ideas. That's the one we

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settled on.

Q Anthony, in my understanding, was DiLeonardo had never been into Huntington Village, he wasn't familiar with the area?

A As far as I'm aware. I don't know if he had been there before.

Q But you had to -- when you left The Artful Dodger, you were taking him back to Jericho Turnpike because he wasn't familiar with the area, according to your previous statement.

Does that refresh your recollection at all?

MR. CLARKE: Objection to the form.

A You asked me.

Q All right.

Listen, do you have any recollection, as you sit here today, whether Anthony was ever out in Huntington Village?

A Other than with me, no.

Q So, this is a spontaneous

1 Edward Bienz 199

2 decision, you drive, Anthony drives your car
3 from the Brew Haus to the Blue Honu?

4 A Say that again.

5 Q From the Brew Haus to the Blue
6 Honu?

7 A Yes.

8 Q Now according to the chart, it
9 says that you were at the Black Forest Brew
10 Haus from 8:00 to 9:30.

11 That could have been from 8:00
12 to 10:00, you're saying?

13 A Yes.

14 Q I'd like you to do me a favor
15 and just write in on your copy, you know,
16 your recollection, 8:00 to 10:00.

17 A (Indicating.)

18 Q Now according to your statement,
19 it said that you stayed at the Blue Honu for
20 about a half hour, correct?

21 A Yes.

22 Q So you said it would take about
23 15 minutes to get from Farmingdale to
24 Huntington Village?

25 A Approximately.

1 Edward Bienz 200

2 Q When you got there, where did
3 you park?

4 A On a public lot on the west
5 side, near New York Avenue.

6 Q Then you walked into the Blue
7 Honu.

8 Give me an estimate, the best
9 you can, right in there, the time frame that
10 you believe you were in the Blue Honu.

11 A Write down an estimate?

12 Q Yeah.

13 MR. CLARKE: I have a problem
14 with him writing down estimates.

15 MR. GRANDINETTE: It's okay. I
16 want him to write it in the chart.
17 Give me an estimate as to what time
18 you were in the Blue Honu.

19 MR. CLARKE: You want him to
20 write an estimated time?

21 Q I want you to write down what
22 time.

23 If you want to write EST before
24 the time, that's fine.

25 A Well, I mean, there's a half

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hour written down.

I don't really know if we left at 9:30 or 10 o'clock. Half hour, I could have been there a half hour earlier.

Q That's why it's an estimate. The best you can. Give me an estimate.

A Could be 10 o'clock.

Q Then you said that you were there --

MR. CLARKE: An estimate.

Now you're estimating you were there at 10:00?

You wrote down 10 o'clock.

What does it mean?

THE WITNESS: You know what, I'm getting confused, what you want me to do here.

First you have me write 10 o'clock, then put in the approximate time I left.

Now you have me at 10 o'clock, estimating when I got there.

I already explained that it was

1 Edward Bienz 202

2 around 9:30 or 10.

3 So obviously it's about a 15 to
4 20-minute, approximately, drive down
5 to the area.

6 So then subsequently you exit
7 your car, right. You walk into the
8 establishment. Now that would be the
9 time when you arrive there.

10 If we're doing all these things,
11 obviously there's a time you're going
12 to take, depending on how many traffic
13 lights you hit, how long does it take
14 to exit your car and walk there. It's
15 all approximate.

16 We left, the Black Forest Brew
17 Haus between 9:30 and 10 o'clock.

18 Q Can you give me an estimate of
19 what time you were in the Blue Honu that
20 night?

21 A An estimate?

22 Q Yes?

23 A Between 9:50 to 10:30.

24 Q Could you write that down
25 please, when can you arrived.

1 Edward Bienz 203

2 A (No response)

3 Q Now, you indicated you stayed,
4 in your statement, about a half hour, you
5 went across the street.

6 How far is it from the Blue Honu
7 to The Tavern?

8 A Quarter mile.

9 Q Did you walk or take your car?

10 A Walked.

11 Q Was The Tavern still open?

12 A To the best of my memory, yes.

13 Q Have you been there since?

14 A No.

15 Q According to your statement, you
16 were there for about an hour, in The Tavern.

17 So can you give us an estimate,
18 by writing it in there, the hours that you
19 were at The Tavern, or the hour you
20 remember?

21 Just for the record, if you can
22 tell us what you're writing.

23 A Between 2250 to 2330.

24 Q Then according to this, you were
25 at The Artful Dodger for another hour.

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How far is it from The Tavern
The Artful Dodger?

A Short walk. Less than half a
mile.

Q Did you walk it that night?

A Yes.

Q So, under a half mile?

A Yes.

Q Is it on the same street?

A No. It's like one block over.

Q You walked it, you didn't take
your cars?

A Yes.

Q So, could you then record the
time that you believe you were in The Artful
Dodger?

A When we arrived?

Q The time -- the hour that you --
approximately the hour that you spent The
Artful Dodger.

For the record, what time was
that?

A Between 2330 to 0100.

Q Now, would it be fair to say

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that based upon your previous statement,
that when you went to these three places,
your purpose was to socialize and enjoy
yourself with your company?

A Yes.

Q That's what you did?

A Yes.

Q Would it be fair to say that you
drank -- you didn't have anything to eat,
right?

MR. CLARKE: He ate at the Brew
Haus.

Which place are you talking
about?

MR. GRANDINETTE: All three
places.

Q You went, you drank; you didn't
have anything to eat.

MR. SCHROEDER: Objection.

MR. CLARKE: Objection to the
form.

You can answer.

A Nothing to eat in the three
places.